



**Date:** September 17, 2013

**To:** Thomas J. Bonfield, City Manager

**Through:** W. Bowman Ferguson, Deputy City Manager

**From:** Joel V. Reitzer, Jr., Director, General Services Department

**Subject:** Resolution requesting the Release of Certain DPAC Premises and Authorizing the Execution and Delivery of a Notice of Extension to the DPAC Deed of Trust to extend the Lien to Additional Property.

**Executive Summary**

On September 16, 2013 City Council authorized the City Manager to execute a development agreement (“Development Agreement”) with Blackwell Street Management Company, LLC (“Blackwell” or the “Developer”) for the development of a “Wrapper Building” to be located adjacent to, and connecting to the Durham Performing Arts Center DPAC. According to the terms of the development agreement, the project required a certain minimum private investment from the Developer in exchange for certain public investments in the project, which will require the conveyance of certain real property rights between the parties. Although the Development Agreement outlines the obligations of the City and Blackwell necessary to complete the project as contemplated, the trustee of the deed of trust for the DPAC real property must give consent before any DPAC property secured by the deed of trust can be conveyed to the Developer pursuant to the project. This request must be made by formal resolution adopted by the City Council providing detailed descriptions of the DPAC real property conveyances to be released.

**Recommendation:**

That City Council:

1. Adopt a resolution requesting the release of certain premises related to an installment purchase contract and authorizing the execution and delivery of a notice of extension to the deed of trust related thereto in order to extend the lien to additional property.
2. Authorize the City Manager to approve and/or execute all project related property transactions, instruments and agreements required pursuant to the approved development agreement and adopted resolution including, but not limited to, termination & release of dumpster easement, new dumpster easement, easement for maintenance of mechanical equipment, one building agreement, the easement for

cross access, the easement(s) for footings, the easement for utilities, deeds for fee parcels, deed(s) for air rights, stormwater cross access and utility easement(s), easement(s) for stormwater drainage, termination of 9 ft. cross access easement (in East Deck), new cross access easement (in East Deck) and the temporary construction easement(s).

## **Background**

The Durham Performing Arts Center is located at 123 Vivian Street and sits on approximately 1.465 acres. Blackwell Street Management Company, LLC owns property adjacent to the west side of the DPAC property and has proposed construction of a Wrapper building to be located contiguous to the DPAC building and East Parking Deck. The proposed construction will require exchange of certain property interests between the City and Blackwell. The City supports and encourages the location of desirable business enterprises which will increase the tax property base and add new jobs and business prospects to the City. The DPAC has been very successful for the City, both as a facility, regional draw and an economic driver for downtown businesses. The addition of the proposed Wrapper Building, comprised of 134 hotel rooms and restaurant and commercial space, is anticipated to increase the attendance at the DPAC and be an even more attractive draw for out-of-town patrons to this premier performing arts venue. The addition of much needed downtown hotel rooms within close proximity to the DPAC and other venues, such as the Durham Convention Center, will boost event options and increase activity within downtown. Moreover, as part of the proposed construction, certain DPAC amenities will be added, including a women's restroom facility and President's Club Lounge accessible from the second floor of the DPAC. The new women's restroom is proposed to augment current facilities, thereby reducing the long lines that form during short intermission time frames of DPAC events. While the DPAC meets the building code for the requisite number of plumbing fixtures, use and operation of the DPAC has identified that additional women's restrooms are necessary to ensure that patron expectations and experiences are satisfactory. The new restroom facility will include 15 new toilets.

The President's Club serves as the VIP premium seating program for the DPAC. In addition to key benefits such as premium seats and reserved parking, VIP members can take advantage of access to the President's Club Lounge located on the first floor of the DPAC. Further, the President's Club Lounge is a rentable event space with opportunities to produce additional revenue for the DPAC, such as naming rights. The current President's Club Lounge is approximately 800 SF. This limited square footage is not enough to accommodate the needs of the DPAC and currently provides limited restrooms and growth opportunities. The operator has maximized the tickets sales of the current President's Club due to the limitations of the President's Club Lounge. The expanded space will include separate entry and direct DPAC connection, separate restrooms within the lounge area, enlarged lounge/seating area and updated audio-visual features. The existing space is proposed to be marketed for corporate private party space and therefore continue to generate revenue for the DPAC. Estimates from the operator for this expansion project an increase in net income for the DPAC.

In order to accommodate construction of the new Wrapper building, exchange of certain property interests is necessary as well as execution of various property conveyances by way of easements and other agreements. The property exchanges, easements and agreements are acceptable to the City and necessary to accomplish development as proposed.

## Issues and Analysis:

The property conveyances necessary to construct the project as contemplated include easements, dedication by plat and other agreements. The property conveyances are complex and require approval by the trustee and beneficiary of the deed of trust, which secures the interests of the DPAC real property bond holders. All proposed property releases and exchanges are necessary to complete the project as contemplated. The property conveyances have been detailed in the resolution for approval by Council, which resolution also serves as the formal request to the trustee of the deed of trust that the real property conveyances be approved and authorized.

## Property Conveyances:

The success of the Project requires completion of complex property transactions given the proximity of the Wrapper Lot to the DPAC lot and intended use of the DPAC amenities. The property transactions include:

- **Dumpster Easement Area Designation:** Blackwell will convey to the City the New Dumpster Easement in the East Parking Deck as shown on the Project Plat (“Trash Easement Area”. The New Dumpster Easement shall accommodate the current and future waste disposal needs of the DPAC. The New Dumpster Easement will include an associated ingress and egress easement to and from Mangum St. and a utility access easement to allow for connections to necessary utilities necessary for operation, management and maintenance of the DPAC waste disposal needs. In return for conveyance of the New Dumpster Easement to the City and as part of its Public Investment in the Project, the City agrees to abandon the Original DPAC Dumpster Easement.
- **Mechanical Equipment Easement:** The location of the Wrapper building adjacent to the DPAC building complicates the ability of the City to remove, replace and maintain certain large HVAC facility equipment that services the DPAC. During and upon completion of the Project, the City will require periodic access to the DPAC mechanical equipment for replacement, removal or repair. Such access may require encroachment over the Wrapper Building and Wrapper lot using large cranes or helicopter capable of lifting equipment into the air and over the ground. Blackwell agrees to convey a Mechanical Equipment Easement to the City for such purposes described above.
- **One Building Agreement:** Due to certain design elements of the Wrapper Building, its proximity to the DPAC building and shared elements between the 2 buildings, execution of a “one building agreement” is required. The one building agreement allows the developer to proceed with construction of the Wrapper Building in close proximity to the DPAC building and establish joint facility operational requirements and property owner responsibilities for certain shared structures and walls. City and the Wrapper lot property owner agree to execute and record a one building agreement conforming to legal requirements and North Carolina Building Code.

- **Other Project Property Conveyances:** Other real property interest conveyances are required in order to proceed with the project. Such conveyance(s) include, but are not limited to the following: termination & release of dumpster easement, new dumpster easement, the easement for maintenance of mechanical equipment, the one building agreement, the easement for cross access, the easement(s) for footings, the easement for utilities, deeds for fee parcels, deed(s) for air rights, stormwater cross access and utility easement(s), easement(s) for stormwater drainage, termination of 9 ft. cross access easement (in East Deck), new cross access easement (in East Deck) and the temporary construction easement(s).

**Alternatives:**

The adoption of the resolution for property conveyances must occur in order to proceed with DPAC wrapper building and amenities as proposed.

**Financial Impact:**

There is no financial impact associated with adoption of the resolution.

**Attachments:**

1. Resolution
2. Deed of Release
3. Notice of Extension
4. Plat (property conveyances)